IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 115 OF 2006

Pushpa P. Ramayan & ors. ... Petitioners

V/s

Smt. Natal Peter D'Mello & ors. ... Respondents

Mr. P.N. Kulkarni for the petitioners.

Mr. H.K. Vazirani for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 27TH FEBRUARY, 2006

P.C.:

1. Heard both sides. Perused the record.

2. The petitioner tenant has preferred this petition against the judgment and order passed by the lower appellate Court dated 14.10.2005 dismissing the appeal and confirming the judgment and order passed by the Trial Court on 17.4.2000 decreeing plaintiff's suit for possession of the suit premises under the provisions of the Bombay Rent Act.

3. The plaintiff respondent filed the suit for eviction

of the defendant from the suit premises on various grounds including the ground contemplated under Sec. 13(1)(g) of the Bombay Rent Act. Originally the plaintiff pleaded many grounds seeking eviction including the ground of nuisance and annoyance and dcree came to be passed by the lower Court after hearing both parties on the available evidence that the plaintiff had proved that he required the suit premises reasonably and bonafide and also recorded finding that greater hardship will be caused if the decree is refused to be passed in favour of the plaintiff than the defendant by passing the decree.

The Trial Court also passed decree on the ground of nuisance and annoyance and accordingly held against the defendant.

4. The appeal was carried to the appellate Court, before whom the only issue of bonafide requirement was agitated and the learned lower appellate Court concluded that the plaintiff’s suit deserves to be decreed by virtue of Sec.13(1)(g) of the Bombay Rent Act. It was also held that the issue regarding greater hardship was also decided in favour of the plaintiff. Hence the present petition.

5. At the outset, it may be noted that both the Courts below have concurrently recorded finding to the effect that the plaintiff requires suit premises reasonably and bonafide for personal use and occupation. On the basis of available evidence to the effect that, the plaintiff's evidence regarding bonafide requirement, was conclusive as it was not challenged by the petitioner in the course of cross-examination. The version of the plaintiff and her daughter remained unchallenged and, therefore, it was held that the plaintiff had proved the reasonable and bonafide requirement of the suit premises. Similarly, on the basis of evidence, the issue of greater hardship was also adjudicated in favour of the plaintiff as there was sufficient evidence in support of her contention and it was observed that the defendant did not produce any documentary evidence in support of her plea that she would suffer greater hardship than the plaintiff if the decree is refused to her. The defendant tried to submit that the plaintiff was having three room accommodation which was sufficient for herself to accommodate her married daughter and son-in-law, however, said statement remained unchallenged.

6. Be that as it may, the fact remains that both the Courts have appreciated the entire evidence in proper perspective and hence it would brook no interference within the paramters of Art. 227 of the Constutiton of India. Hence I hold that the petition is devoid of any merits and, as such, stands dismissed with no order as to costs.

6. At this stage, the learned counsel for the petitioner made statement that they should be given some time to vacate the premises. In view of the facts and circumstances, the petitioner is given two months' time to vacate the premises on furnishing undertaking to the effect that no third party interest shall be created by the petitioner during the said period and the undertaking shall be signed by all adult members of the petitioner family and in the meantime, the petitioner shall continue to pay the agreed rent of the suit premises. The undertaking to be furnished within two weeks from the date of this order.

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